IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 715 of 2005.

Decided on: 15.06.2007.

Smt. Kamlesh Devi.

… … … Petitioner.

Versus

Union of India and Others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the petitioner: **Mr. V.D. Khidta, Advocate.**

For the Respondents: **Mr. M.A. Khan, Central Government Counsel.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that late Shri Parshotam Singh, husband of the petitioner was enrolled in the Army (J & K Rifle) on 28.5.1980. He was treated at various Military Hospitals as per the details given in para 4 of the reply filed by respondents No.1 to 3. The medical case sheet of the petitioner's husband is also annexed with this petition and marked as Annexure P-2.

Whether reporters of local papers may be allowed to see the judgment? No.

The show cause notice was issued to the husband of the petitioner on 31st January, 1994. He had filed reply to the same on 7th April, 1994 requesting the authorities that he may be permitted to continue in the service. He was discharged from the service under the Army Rules 13(3) item No.(iv) of Army Rules, 1954 on extreme compassionate grounds in medical category SHAPE-1 (AYE) with effect from 30th April, 1994.

Mr. V.D. Khidta had strenuously argued that late Shri Parshotam Singh had not submitted any application seeking discharge from the Army on compassionate grounds since he had already shown his willingness to serve as per reply to show cause notice dated 7th April, 1994. Kr. Khidta had further contended that once the husband of the petitioner had shown his willingness as per reply to show cause notice dated 7th April, 1994, there was no occasion for him to seek discharge from service on the same date, i.e. 7th April, 1994. His alternative submission is that even the contents of letter dated 7th April, 1994, Annexure R-2 reveal that his client was not medically fit and he was to be placed in category 13(3)III(ii) and not under Rule 13(3) Item No.(iv) of the Army Rules, 1954. Mr. M.A. Khan had supported the order dated 30th April, 1994.

I have heard the parties and have also perused the record.

Admittedly, the petitioner's husband had put in at the time of his discharge from service 13 years 11 months and 2 days service. He was not maintaining good health as is evident from the contents of Annexure P-2 as well as para 4 of the reply filed by respondents

No.1 to 3. He was put in medical category SHAPE-1 (AYE) at the time of discharge. In the reply (dated 7th April, 1994) to the show cause notice dated 31st January, 1994, he had shown his willingness to continue in service. In other words, he was not interested in seeking discharge from the service. If that was so, how a person who was ready and willing to serve as per letter dated 7th April, 1994 could be presumed to have submitted application on the same date, i.e. 7th April, 1994 seeking discharge from the service. This Court is of the opinion that the petitioner's husband could not submit the application for seeking discharge voluntarily once he had shown his willingness to remain in the service. There is no mention of reply furnished by the petitioner to show cause notice, dated 7th April, 1994 in the discharge order dated 30th April, 1994.

The matter now can be viewed from another angle. Assuming hypothetically that the petitioner's husband late Shri Parshotam Singh had submitted the application dated 7th April, 1994 seeking discharge from the service. It is evident from the contents of this letter that he was not keeping good health. The reason assigned in the Hindi version of letter dated 7th April, 1994 specifically is that he was mentally weak. The combined reading of Annexure P-2 and the contents of para 4 of the reply filed by the respondents suggests that Shri Parshotam Singh was not medically fit and it was only on that basis he had submitted application seeking discharge from the service. If Shri Parshotam Singh was not medically fit in that eventuality his request for

discharge from the service was to be considered on the medical grounds and he was to be put in category 13(3) II item No.(ii) instead of 13(3) III Item (iv) of the Army Rules, 1954. It has also come on the record that petitioner's husband's medical category at the time of retirement was SHAPE-1 (AYE). Shri Parshotam Singh had also stated in his application dated 7th April, 1994 that he was seeking retirement to take proper treatment. Since the petitioner was to be put in category 13(3) II (ii) of the Army Rules, 1954, the plea raised by the respondents that he was not entitled to disability pension is liable to be rejected. The application submitted by late Shri Parshotam Singh was not for seeking discharge simpliciter, but it was due to the fact that he was not medically fit.

The upshot of the above discussion is that the petitioner's husband Shri Parshotam was to be put under Rule 13(3) II Item No.(ii) of the Army Rules, 1954. He had sought discharge on medical grounds and it was not voluntary resignation. The respondents have not taken into consideration the reply furnished by petitioner's late husband to the show cause notice at the time of his discharge, i.e. 30th April, 1994.

Accordingly, this petition is allowed. The late husband of the petitioner will be deemed to be discharged under Rule 13 (3) II Item No.(ii) instead of under Rule 13(3) III Item No.(iv) of the Army Rules, 1954. The petitioner's late husband at the time of discharge had put in 13 years, 11 months and 2 days service but for the discharge on medical grounds he was bound to complete 15 years qualifying service for the pension. Since the discharge of

petitioner's husband was on medical grounds after completing 13 years, 11 months and 2 days service, it will be deemed that the petitioner's husband had completed 15 years qualifying service entitling him to pension. The respondents are directed to work out the pension with effect from 30th April, 1994 onwards with interest at the rate of 9% per annum. The Annexure P-6, dated 30th April, 1994 is also quashed and set aside with a declaration that Shri Parshotam Singh will be deemed to have completed 15 years of qualifying service and on that basis the petitioner is entitled to get the family pension after the death of her husband with effect from 19th September, 1997. No order as to costs.

June 15, 2007 **(Rajiv Sharma)**
(sck). **Judge**